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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of)
)
Open Network Architecture Tariffs) CC Docket No. 92-91
of Bell Operating Companies)

OPPOSITION

BellSouth Telecommunications, Inc. ("BellSouth") files this opposition to the petition for reconsideration of MCI Telecommunications Corporation ("MCI"), which has been submitted in the above-captioned proceeding. MCI continues to complain of the Commission's action denying intervenor access to certain inputs used in the operation of the Switching Cost Information System (SCIS) computerized model. Petitioner's filing raises no issue which has not been fully considered by the Commission, and for this procedural infirmity alone should be dismissed. Moreover, the petition is grounded on a belief that, by virtue of MCI's status as an intervenor, it is entitled to all tariff support materials filed by BellSouth and other LECs without regard to considerations of public policy and the competing rights of other parties. Because this novel view finds no support in the Communications Act or Rules of the Commission, MCI's petition is substantively defective and warrants summary denial.

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DISCUSSION

On January 14, 1994, MCI filed a petition for reconsideration, seeking review of a Commission decision which concluded the investigation of ONA tariffs filed by BellSouth and other RBOCs.¹ MCI's only complaint with respect to this order is the Commission's determination to require partial disclosure of SCIS software and associated data inputs while denying intervenor access to certain competitively sensitive documentation (e.g., switch vendor pricing information). MCI maintains that redacted versions of the cost model, where this proprietary information was deleted, were "totally useless" to intervenors in their examination of the ONA tariff filings.² In consequence of this, per MCI, intervenors were unable to perform sensitivity analyses on data inputs and thus to enjoy meaningful participation in the tariff investigation. It is contended that this failure to afford intervenors access to all SCIS material constitutes a violation of statutory law and a denial of due process.

¹ Open Network Architecture Tariffs of Bell Operating Companies, CC Docket No. 92-91, FCC 93-532, Order, released December 15, 1993. MCI has also petitioned for reconsideration of a companion order, which upheld certain limitations on intervenor access to the SCIS software and data inputs. Commission Requirements for Cost Support Material to be Filed with Open Network Architecture Access Tariffs, FCC 93-531, Order, released December 15, 1993. This MCI filing presents issues common to the instant petition, and on that basis is likewise opposed by BellSouth.

² MCI, p. 2.

None of these contentions is new. All have received exhaustive review, first by the Common Carrier Bureau and subsequently by this Commission. The instant petition, and a companion filing made the same day, are merely repetitious of claims previously advanced and rejected. MCI's continued prosecution of these matters in the face of a dispositive ruling must be deemed an abuse of the Commission's processes. As such, the petition here merits only summary dismissal.

Apart from its procedural deficiency, the petition advances a view which is unsupported by statutory and constitutional law. Contrary to MCI's assumption, intervenors in a tariff investigation do not enjoy an unfettered right to all documentation provided to the regulator in support of a filing.³ This is particularly true of material which comprises an intellectual property or trade secret and material the disclosure of which would impede the Commission's future efforts to obtain information of like value. Both considerations are present in the

³ The case of American Television Relay, Inc., 63 F.C.C.2d 911, 921 (1977), does not stand for the proposition contended by MCI. That order merely denied ATR's effort to introduce new evidence following an administrative hearing, certification of the record and transmittal of a recommended decision to the Commission for final adjudication. It creates no substantive right of third-party access to information provided by a carrier to the Commission and used in discharging the latter's statutory obligations. Indeed, the Commission's rules for requesting confidential treatment of submitted data, 47 C.F.R. § 0.457, implicitly contradict the existence of any such absolute entitlement.

investigation of SCIS costing methodology. The parameters of intervenors' access to SCIS material were the product of a compromise painstakingly developed between competing interests. Nothing contained in the present MCI filing warrants a reexamination of that decision.

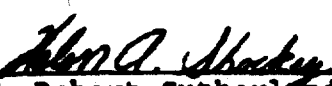
CONCLUSION

The position urged by MCI is repetitious of earlier claims which have been rejected by the Commission. Moreover, it is legally unsound and its adoption would prove detrimental to significant policy objectives. For all these reasons, the Commission should deny MCI's petition for reconsideration of its order concluding the ONA tariff investigation.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By:


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DATE: January 27, 1994

CERTIFICATE OF SERVICE

I hereby certify that I have this 27th day of January, 1994 serviced all parties to this action with a copy of the foregoing OPPOSITION, by placing a true and correct copy of the same in the United States Mail, postage prepaid, to the persons listed below.

Larry A. Blosser
Frank W. Krogh
Donald J. Elardo
1801 Pennsylvania Avenue, N.W.
Washington, D. C. 20006

This 27th day of January, 1994.



Juanita H. Lee